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6 **UNITED STATES DISTRICT COURT**
7 **WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

8 VARN CHANDOLA,

9 Plaintiff,

10 v.

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12 SEATTLE HOUSING AUTHORITY, a
13 municipal corporation; and JAMES FEARN, an
individual,

14 Defendants.

Case No. 2:13-cv-557-RSM

ORDER ON MOTIONS

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16 This matter comes before the Court on Plaintiff's Motion for Leave to File Third Amended
17 Complaint (Dkt. # 47), Defendants' Motion to Continue Trial Date and Dispositive Motions
18 Deadline (Dkt. # 64), and Defendants' Motion for Leave to File Excess Pages for Summary
19 Judgment Motion (Dkt. # 72). Having considered the briefing and relevant record and for the
20 reasons set forth herein, Plaintiff's request to file a third amended complaint shall be denied,
21 Defendants' motion to continue shall be denied, and Defendants' request to file excess pages shall
22 be granted in part.

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24 **Analysis**

25 **(1) Leave to Amend**

26 Plaintiff Varn Chandola moves the Court for leave to file a third amended complaint in
27 order to bring a claim under 42 U.S.C. § 1983 based on Defendants' alleged retaliation for
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1 petitioning activity. Chandola premises his claim on an email sent January 30, 2013, in which
2 Defendant James Fearn directed Defendant Seattle Housing Authority (“SHA”) to pay Chandola
3 approximately \$900 invoiced for his work as a hearing officer on the *Nichols* case. *See* Order on
4 Reconsideration, Dkt. # 30 (discussing *Nichols* case). Chandola additionally bases his claim on a
5 statement by Fearn during his deposition of May 13, 2014, in which Fearn stated, in part, that one
6 reason that SHA did not pay Chandola was that “he had filed his claim, if not his lawsuit, by
7 then.” *See* Dkt. # 47, p. 3 (citing Dkt. # 48, Ex. 1, pp. 179-80). Plaintiff contends that this
8 statement evidences Fearn’s improper retaliatory motive behind his refusal to pay Chandola for
9 work performed.

11 Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend “shall
12 freely be given when justice so requires.” However, this liberal policy in favor of granting leave is
13 not unbounded. It is tempered by considerations of “undue delay, bad faith or dilatory motive on
14 the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,
15 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of
16 amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

18 Here, the Court agrees with Defendants that the requested leave to amend must be denied,
19 principally as it untimely and unduly prejudicial to Defendants. While the Court recognizes that
20 Plaintiff was not in possession of Fearn’s allegedly incriminating statement until his deposition
21 was taken in May 2014, Plaintiff has been in possession of the triggering email since Defendants
22 served it on Plaintiff in response to written discovery in November 2013 and was at liberty to
23 depose Fearn at an earlier date to probe his motives in a timely fashion. Plaintiff’s request to
24 amend seven months later, at the close of discovery, is plainly unduly delayed, which alone is a
25 reason for denying the instant request. *See Contact Lumber Co. v. P.T. Moges Shipping Co.* 918
26 F.2d 1446, 1454 (9th Cir. 1990). In addition, the dilatory request would unduly prejudice
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1 Defendants, who have already deposed Plaintiff and will now be unable to question him on the
2 damages connected to his newly asserted claim. That Plaintiff's substantial delay would unfairly
3 disadvantage Defendants also weighs against amendment. *See Earlie v. Jacobs*, 745 F.2d 342 (5th
4 Cir. 1984). The futility of the request provides further grounds for denying leave: Plaintiff's
5 allegation is premised on a misleading excerpt from Fearn's deposition, which considered in its
6 full context, negates a showing of retaliation. *See* Dkt. # 48, Ex. 1, pp. 180-81 (answering "No"
7 when asked if Fearn chose not to pay Chandola because he had filed a lawsuit and explaining that
8 Chandola was claiming much more than the invoiced amount). Leave to amend shall accordingly
9 be denied.
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11 **(2) Continuance of Deadlines**

12 Defendants request leave to continue the current November 12, 2014 trial date to February
13 9, 2015, and to continue to current August 14, 2014 dispositive motions deadline to September 11,
14 2014. Federal Rule of Civil Procedure 16(b)(4) provides that a "schedule may be modified only
15 for good cause and with the judge's consent." Here, the Court agrees with Plaintiff that
16 Defendants have failed to make the requisite showings for the requested continuances. As the
17 Court herein denies Plaintiff's request to add a new allegation, there are no new issues before
18 Defendants that would require a reopening of discovery. The remaining allegations have been
19 known to Defendants for many months, and there is no reason that Defendants should not be in a
20 position to file their motion for summary judgment as to these claims before the deadline
21 provided. Defendants have not shown that these claims are so unusually complex or novel, or that
22 they have become more so during discovery, so as to justify an extension. For the sake of judicial
23 economy and as good cause to extend deadlines has not been shown, Defendants' request is
24 accordingly denied.
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26 **(3) Leave to File Excess Pages**
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1 Pursuant to Local Civil Rule 7(f), Defendants seek leave to file multiple summary
2 judgment motions of up to a total of 60 pages in length or, alternatively, a single over-length brief
3 of no more than 60 pages. Defendants contend that the additional pages are necessary to fully
4 address the five claims in Plaintiff's operative complaint on which Defendants move for summary
5 judgment dismissal, as well as to address dismissal of all claims against Defendant Fearn on the
6 basis of qualified immunity.
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8 The Court agrees that the number of claims to which Defendants' dispositive motion
9 relates warrants, in this instance, additional briefing. However, the Court does not agree that the
10 complexity of the case warrants briefing of the extent requested. Accordingly, the Court shall
11 grant Defendants an additional sixteen (16) pages for a single summary judgment motion, for a
12 total of forty (40) pages. Defendants shall not be granted leave to file contemporaneous dispositive
13 motions. Plaintiff shall also be granted sixteen additional pages for his opposition brief, and the
14 reply brief shall be limited to one-half the brief in opposition. *See* LCR 7(f)(4).
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16 Conclusion

17 For the reasons set forth herein, the Court hereby ORDERS as follows:

18 (1) Plaintiff's Motion for Leave to File Third Amended Complaint (Dkt. # 47) is DENIED.

19 (2) Defendants' Motion to Continue Trial Date and Dispositive Motions Deadlines (Dkt. #
20 64) is DENIED.
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1 (3) Defendants' Motion for Leave to File Excess Pages for Summary Judgment Motion
2 (Dkt. # 72) is GRANTED in part. Defendants are granted an additional sixteen (16)
3 pages of briefing, for a total of forty (40) pages for their single dispositive motion.
4 Plaintiff is also granted an equal number of additional pages for his opposition brief,
5 for a total of forty (40) pages. Any reply brief shall be no more than one-half the
6 number of pages filed in opposition.
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8 Dated this 8th day of August 2014.

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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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